

**CONCESSION CONTRACT
ATTACHMENT 2 - SPECIAL PROVISIONS**

1. **PURPOSE:** Contractor agrees to provide to State and local agencies or governmental entities empowered to expend public funds Inmate/Ward Telephone System ("IWTS") services as described herein:
 - Contractor will provide non-coin local, intralata, interlata, interstate and international IWTS services statewide.
 - The State agencies obtaining IWTS services are the California Department of Corrections ("CDC"), the California Youth Authority ("CYA") and others that have joined or may subsequently join this contract. All eligible State and local agencies and governmental entities may participate in this Contract by submitting an executed Memorandum of Agreement form (Attachment I).

2. **SERVICE AVAILABILITY:** The services shall be provided twenty-four (24) hours a day, seven (7) days a week. This requirement for service availability may only be constrained, on an individual location basis, where twenty-four (24) hour access is restricted and where this access restriction is beyond the control of the Contractor.

3. **PROJECT REPRESENTATIVES:** The project representatives during the term of this agreement will be:

State Agency: Department of General Services	Contractor:
Name:	Name:
Phone:	Phone:
Fax:	Fax:

Direct all inquiries to:

State Agency Department of General Services	Contractor:
Section/Unit: Telecommunications Division	Section/Unit:
Attention: Contracts Unit	Attention:
Address: 601 Sequoia Pacific Boulevard	Address:
Phone:	Phone:
Fax:	Fax:

4. **APPROVAL:** This Agreement is of no force or effect until signed by both parties. Contractor may not commence performance until such approval has been obtained.

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5. TIMELINESS: Time is of the essence in this Agreement.

6. CONCESSION PAYMENTS

The Contractor shall make concession payments to the State's General Fund in accordance with IWTS RFP SECTION 5 – Administrative Requirements 5.27 Concession Fee Payments and IWTS RFP SECTION 7 – Pricing Proposal 7.4 Concession Fee Reduction Calculation unless otherwise appropriate per the requirements of California Government Code Section 16301. Unless otherwise approved by the Department of Finance, all concession payments shall be submitted to the State of California General Fund address as shown below:

State of California General Fund
Box 151
Sacramento, CA 95812-0151

Each non-state agency will be responsible for providing the names of authorized personnel and account numbers in their agency to their Project Representatives for the purpose of receiving concession funds.

Payments representing concession payments from contract revenues shall be paid monthly by the 30th calendar day (or last day of the month if the month has more or less than 30 days) of the following month. A monthly management report, including a concession payment summary for each month, will be provided to DGS representative identified in Paragraph 3 above.

For local agencies utilizing this Contract, Contractor must provide two percent (2%) of the local agency's annual revenues to DGS by check or electronic deposit as an administrative fee to cover the DGS Telecommunications Division program management responsibilities and services under this Contract. However, it is understood that this fee payment provision will not be instituted without prior notification by DGS Telecommunications Division. See IWTS RFP SECTION 1 – Introduction.

7. DEFINITIONS

- a. **Equipment** - An all inclusive term which refers either to individual components or to a complete telecommunications system or subsystem, including all peripheral telecommunication equipment, enclosures, shelters, etc.
- b. **Contractor Services** - Equipment, Software, and Telephone Services.
- c. **Equipment Failure** - A malfunction in the Equipment, excluding all external factors, which prevents the accomplishment of the Equipment's intended function(s). If microcode or Operating Software, residing in the Equipment, is necessary for the proper operation of the Equipment, a failure of such microcode or Operating Software which prevents the accomplishment of the Equipment's intended functions shall be deemed to be an Equipment Failure.

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- d. **Operational Use Time** - For performance measurement purposes, that time during which Equipment is in actual operation on State owned or leased premises.
- e. **Preventive Maintenance** - That maintenance, performed on a scheduled basis by the Contractor, which is designed to keep the Equipment in proper operating condition.
- f. **Remedial Maintenance** - That maintenance performed by the Contractor which results from Equipment (including Operating Software) failure, and which is performed as required; i.e., on an unscheduled basis.
- g. **Facility Readiness Date** - The date specified in the order by which the State must have the site prepared and available for Equipment delivery and installation.
- h. **Installation Date** - The date specified in the order by which the Contractor must have the ordered Equipment installed and ready (certified) for use by the State at the specified location.
- i. **Performance Period** - A period of time during which the State, by appropriate tests and production runs, evaluates the performance of newly installed Equipment and Software prior to its acceptance by the State.
- j. **IWTS Agent** – The IWTS Agent is the State or local agency representative who is responsible for each agency’s IWTS equipment and services.
- k. **Service Request Notification** - The means for ordering Equipment and services from the IWTS Contractor. The method of Service Request Notifications shall be mutually agreed upon by each participating agency and Contractor.
- l. **Software** - An all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including Operating Software, programming aids, application programs, and program products, all of which are proprietary to Contractor.
- m. **Inmate Telephones** - Telephones installed in a State correctional facility for inmate use.
- n. **Ward Telephones** – Telephones installed in a CYA facility for ward use.
- o. **State** – Except as to the payment and contract administration terms specified in this contract – wherein a distinction is made between the State, including its

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- constituent agencies and bodies, and agencies of lower political and public entities and within the State, including municipalities and public institutions – the term “State” shall include all participating State agencies.
- p. **Operating Software** - Routines, whether or not identified as program products, that reside in the Equipment and are required for the Equipment to perform its intended function(s), and which serve as an interface between the operator, other Contractor-supplied programs, and user programs and the Equipment.
 - q. **Programming Aids** - Contractor-supplied programs and routines executable on the Contractor's Equipment which assist a programmer in the development of applications (including language processors, sorts, communications modules, data base management systems, and utility routines, tape-to-disk routines, disk-to-print routines, etc.).
 - r. **Application Program** - A computer program which is intended to be executed on the Contractor's Equipment for the purpose of performing useful work for the user of the information being processed.
 - s. **Program Product** - Programs, routines, subroutines, and related items which are proprietary to the Contractor.
 - t. **Software Failure** – A malfunction in the Contractor supplied Software, other than Operating Software, which prevents the accomplishment of work, even though the Equipment (including its Operating Software) may still be capable of operating properly. For Operating Software failure, see Paragraph 7c for definition of Equipment Failure.
 - u. **PCC** - Public Contract Code.
 - v. **FCC** - Federal Communications Commission.
 - w. **CPUC** - California Public Utilities Commission.
 - x. **Agreement** – The word “Agreement” is synonymous with the word “Contract”. Therefore, these terms are interchangeable throughout this Contract and are to be interpreted as being identical in meaning.

8. CONTRACTOR COMMITMENTS AND REPRESENTATIONS

a. **Commitments**

Any written commitment by a duly authorized representative of the Contractor within the scope of this Agreement shall be binding upon the Contractor. Failure of the Contractor to fulfill any such commitment shall render the

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Contractor liable for liquidated or other damages due to the State as set forth herein. Such written commitments include but not limited to (1) any warranty or representation expressly made by the Contractor as to Equipment or Software performance, total system performance, or other physical design or functioning characteristics of a machine or software system, (2) any warranty or representation expressly made by the Contractor concerning the characteristics of the items described in (1) above, made in any publication, drawings, or specifications accompanying or referred to in the Contract, and (3) any written notification of or affirmation or representation as to the above which is made by the Contractor in or during the course of negotiations and which is incorporated into a formal amendment to the Contract.

9. MAINTENANCE OF EQUIPMENT

The Contractor is responsible to maintain the Equipment under this Contract. The Contractor shall keep the Equipment in good operating condition and shall be responsive to the maintenance requirements of the State. Equipment maintenance shall be provided in accordance with the provisions of RFP SECTION 5 – Administrative Requirements.

10. NEED FOR CONTRACTOR SERVICES DUE TO EMERGENCY

- a. The contractor shall make every reasonable effort to assist the State in procuring use of Contractor services compatible with that provided under this contract to meet emergencies.
- b. The State, at its option, may accept or reject the use of emergency Equipment.

11. RISK OF LOSS OR DAMAGE

The State shall be relieved from all risks of loss or damage to the Equipment provided under this Contract except when such loss or damage is due to fault or negligence of the State.

12. TITLE TO EQUIPMENT

Notwithstanding Attachment 1 to this Contract, Information Technology General Provisions Paragraph 37.a, call detail records and recordings shall be the property of the State. Title to other Equipment, accessories, and devices utilized by the Contractor in performing this Contract shall not vest in the State, unless such items are purchased by the State. All devices and accessories furnished by the

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Contractor hereunder, except those purchased by the State, shall remain the property of the Contractor.

13. CONTRACTOR EVALUATION

In accordance with the California Government Code, Contractor performance evaluation will be completed within the guidelines of the State Administrative Manual, Section 1283. The State contracting agency, upon Contract completion, will complete and forward the Contractor evaluation to the Department of General Services.

14. DVBE PARTICIPATION

Contractor shall utilize the services of a certified Disabled Veteran Business Enterprise (DVBE) as identified in their proposal in response to IWTS RFP SECTION 5 – Administrative Requirements Part 1, 5.32b DVBE Participation Goal, to perform installation, maintenance and repair of Inmate Telephones, Ward Telephones, monitors, recording equipment, and any other related Equipment in accordance with the terms of this Contract.

15. CONTINUING STANDARDS OF PERFORMANCE FOR CONTRACTOR SERVICES

a. Applicability

The Contractor agrees that subsequent to completion of the successful performance period and acceptance of the Contractor Services by the State, the availability and/or performance requirements and criteria established in the IWTS RFP SECTION 5 – Administrative Requirements and SECTION 6 – IWTS Requirements will be met throughout the full term of the contract, including any extensions. If both the Contractor and the State determine and agree, after at least six (6) months experience with the measurement method prescribed below, that the methods and procedures should be modified to more accurately identify gross system deficiencies, an appropriate contract amendment shall be executed to effect such modification.

b. Causes and Effects of Contractor Service Malfunctions

- (1) The State recognizes that Equipment Failures do occur, and that Software is not infallible. Moreover, the State concedes that conditions external to Equipment may cause it to fail, particularly environmental conditions, that are outside the Equipment design operating parameters. The State agrees, therefore, that unsatisfactory Contractor Service performance which is outside the control of the Contractor will not be considered in a determination of the level of performance.

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- (2) In the event Contractor Service failure or unsatisfactory performance is a result of factors external to the IWTS system, the Contractor agrees to make appropriate recommendations to the State in order that such external factors may be corrected to preclude future problems of a similar nature.
- (3) In the event that the precise cause of the failure cannot be readily determined, both the State and the Contractor shall continue to research the situation until the probable cause has been identified or until agreement is reached that the probable cause cannot be identified.

c. Levels of Performance Required

In order to meet the programmatic requirements of the State, the Equipment must be capable, at a sustained basis, of providing the levels of service detail as described in IWTS RFP SECTION 6 – IWTS Requirements, Attachments 6-A through 6-D.

d. Remedies for Unacceptable Levels of Performance

If a Contractor Service does not meet the minimum level of performance the State shall promptly notify the Contractor in writing of such unacceptable performance and the Contractor shall promptly initiate action to remedy the unsatisfactory performance. Contractor shall, at its option, take one or more of the following actions to correct the situation:

- (1) Provide on site Contractor personnel for analysis of the problem;
- (2) Replace the faulty Equipment;
- (3) Provide substitute Equipment satisfactory to the State;
- (4) Modify the Equipment; or
- (5) Take any other action with which the State concurs.

If the Contractor fails to correct the situation to the satisfaction of the State during the thirty (30) calendar days following receipt of written notice from the State, the State and Contractor can mutually agree to extend the time beyond 30 days to a specified date. If the Contractor fails to correct the situation to the satisfaction of the State by the end of the specified time period, then the State may (i) secure from the open market, at the Contractor's expense, replacement Equipment or service, and/or (ii) terminate that portion of the Contract relating to the deficient Equipment or service. The above-described remedies are not intended to constrain either party from any other action mutually agreed to by the Contractor and the State as being more appropriate.

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e. Replacement or Substitution of Equipment by Contractor

If the Contractor, in an attempt to improve the level of performance, replaces or substitutes Equipment that meets all of the Contract requirements, such replacement or substitution shall not decrease any concessions owed to the State.

f. Audit Reimbursement

In addition to the Examination and Audit rights set forth in Appendix A, Attachment 1 General Provisions – Information Technology, Effective 1/1/04, Contractor agrees to reimburse the State for the cost of any audit which finds that the provisioning of contracted IWTS services by call type or call volume is inaccurately reported by five percent (5%) as determined by the State or that rates applied to calls exceed those established in this Agreement by five percent (5%) as determined by the State. Any such audit shall be conducted by an experienced auditor and shall follow commercially reasonable and generally accepted accounting principles. The State may forward audit results showing call rate discrepancies to the CPUC. A follow up audit may be required at Contractor's expense. Repeated and/or egregious violations may be grounds for Termination for Default as set forth in Appendix A, Attachment 1- General Provisions – Information Technology.

The State agrees that the hourly rates charged for any such reimbursable audit shall be in accordance with industry standards. The State further agrees that it will not seek reimbursement for more than 2 audits per calendar year, assuming no follow-up audits are required. In no event shall Contractor's total audit costs under this section exceed one hundred thousand dollars (\$100,000) in any twelve-month period.

16. FRAUD AND THEFT

The Contractor shall agree that the State shall bear no responsibility for fraudulent calls.

Contractor agrees that the State shall bear no responsibility for theft of funds; and furthermore, that no stolen or lost funds will be deducted from revenues on which concessions are paid or total calling volumes are determined State.

17. UNBILLABLE/UNCOLLECTIBLE CALLS

Contractor agrees that the State will bear no responsibility for un-billable or uncollectible calls. Un-billable or uncollectible calls may not be deducted from calling volumes that are calculated for rate adjustment or concession payment purposes for the State.

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18. LIQUIDATED DAMAGES

a. General

The Installation Dates and service level commitments of the Contractor Services set forth have been fixed so that the utilization of the concessionaire services is consistent with the timing schedules of the State's programs. If any of the units of the concessionaire services are not installed within the times specified the delay will interfere with the proper implementation of the State's programs, to the loss and damage of the State. From the nature of the case, it would be impracticable and extremely difficult to fix the actual damages sustained in the event of any such delay. The State and the Contractor, therefore, presume that in the event of any such delay, the amount of damage which will be sustained from a delay will be the amounts set below, and the State and the Contractor agree that in the event of any such delay, the Contractor shall pay such amounts as liquidated damages, not as a penalty. Any liquidated damage payment shall be made by the Contractor within 30 days of notification by the State to do so. The Contractor will not be allowed to deduct the amounts paid to the State for liquidated damages from any past or future commissions paid by the Contractor to the State.

b. Contractor Services: Installation Delays Caused by the Contractor

1. If the Contractor does not install the Contractor Services ready for use as listed under the Authorization to Proceed, on or before the Installation Date(s) specified in the Authorization to Proceed, the Contractor may be liable for fixed liquidated damages specified in this contract, in lieu of all other damages for such non-installation. Liquidated damages shall accrue for each calendar day between the Installation Date specified in the Authorization to Proceed and the date the Contractor Services is certified ready for use or one hundred eighty (180) calendar days, whichever occurs first.
2. If some, but not all of the Contractor Services are installed, ready for use, during a period of time when liquidated damages are applicable, and the State uses any such Contractor Services, liquidated damages shall not accrue against the Contractor Services used for any calendar day the Contractor Services are so used.

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3. If the delay is more than thirty (30) calendar days from the State-specified Installation Date then, by written notice to the Contractor, the State may terminate the right of the Contractor to install Equipment or service, and may obtain substitute Equipment or service, in accordance with the Rights and Remedies of the State for Default provision in this contract. The Contractor shall also be liable for liquidated damages, in the amounts specified in this Contract until substitute Equipment or service is installed, ready for use, or for 180 days from the Installation Date, whichever occurs first.

c. Installation or Delivery Delays Caused by the State

In the event the Contractor Services cannot be installed because the State has failed to prepare the facility by the requested date of service as specified in the Authorization to Proceed, or a change directed by the State requires a later Installation Date of certain Contractor Service and the State has failed to notify the Contractor of the delay at least fifteen (15) days prior to the original Installation Date, liquidated damages shall not accrue.

d. Liquidated Damages Calculation Matrix

The following chart will be used to calculate the amounts due the State in the event of a major equipment or service failure that extends beyond the maximum allowable interval allowable for the Contractor to affect a service installation or repair.

Service Component	Installation interval (expressed in calendar days) for New Service (after receipt of order)	Service Availability (Operatnal use time)	Response Reqmts	Repair/ Restore Services	Contractor fee for missed installation (\$ per calendar day beyond commitment)	Contractor fee for missed repair/restoration (\$ per calendar day beyond commitment)
1- 10 Telephones	30 days	99.5%	4 hours	24 hours	\$150. per affected phone	\$200. per affected phone
11 or more Telephones	45 days	99.5%	4 hours	4 hours	\$250. per affected phone	\$300. per affected phone
Inmate/ward recording and/or monitoring equipment	30 or 45 days (based on number of telephones)	99.5%	4 hours	24 hours	\$1,000. per system	\$1,000.per system
Individual site/ Facility Inmate/Ward System	60 days	99.5%	N/A	N/A	\$1000. per system	N/A
Individual site/ Facility Inmate/Ward System (entire)	N/A	99.5%	4 hours	24 hours	N/A	\$2,500. per system

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system affected
by a major
failure)

Note: Liquidated damages for non-compliance with transition plans are set forth in Paragraph 18e.

e. Transition Plans for Turnover of Contractor Services

Contractor shall prepare and deliver to the State an Initial Transition Phase-In Plan and a Transition Phase-Out Plan for IWTS II pursuant to IWTS RFP SECTION 5 – Administrative Requirements, Part 1, 5.21 Transition Phase-In and Transition Phase-Out of IWTS Equipment.

Contractor shall implement each Transition Plan and perform all tasks in a timely manner, so that there is no disruption or discontinuity in IWTS service from the incumbent contractors to Contractor for the Transition Phase-In, or from Contractor to the State or State's designee for the Transition-Phase-Out. If the State determines that Contractor has not complied with any transition or turnover requirements identified in the Transition Plans, and such non-compliance was a direct result of Contractor, subcontractor or supplier, and not due to any third party or situations outside the control of the Contractor, the State shall give written notice to Contractor of non-compliance. After such notice, Contractor shall have five (5) days, or longer if agreed to by the State, to achieve compliance. For each transition or turnover requirement not completed after the notice of non-compliance period, the State may impose liquidated damages up to \$10,000 per day until Contractor is in compliance with the requirements of the Transition Plan up to a maximum of three hundred thousand dollars (\$300,000).

Any duties and obligations of the Contractor under the Contract necessary to complete transition that have not been performed at the time of contract termination shall holdover and continue in effect beyond any expiration or termination of the Contract term.

19. TRANSFER OF ASSETS

a. Inventory List

Contractor shall provide a current updated inventory list of all Equipment used at all sites in the operation and maintenance of IWTS.

b. Conveyance

Contractor shall convey to the State or a designee such items as the State may select from the aforementioned inventory list as of the date selected by the State, at a price equal to the fair market value or the depreciated value.

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c. Contract Transfer

Contractor shall use commercially reasonable efforts to assist the State in procuring any third party authorizations or consents necessary to permit the conveyance or assignment to the State (or its designee) of all leases, licenses, and other contracts (except those for shared services and facility leases) then currently being used by Contractor, any affiliate or subcontractor, to perform the services of the Contract upon Transition Phase-Out pursuant to IWTS RFP SECTION 5 – Administrative Requirements, Part 1, 5.21b Transition Phase-Out. Contractor's obligation to provide the State with contracts transfer assistance as set forth in this subsection is subject to:

- The State's written request;
- Contractor's right to assign such contract; and
- The State's assumption of all contractual responsibility and liability under such contract, including payment of any transfer fees, license fees, or other charges, and the State's agreement to indemnify Contractor against liability for such assumed contractual obligation.

20. STATEMENT OF WORK

Contractor's proposal in response to the requirements set forth in IWTS RFP Section 5 – Administrative Requirements, part 1, 5.2 Statement of Work Process, after acceptance by the State, shall be considered the Statement of Work (SOW) and shall become part of this Contract. The SOW may be revised upon mutual agreement of the State and the Contractor. Such revisions of the SOW shall become part of this Contract.

This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the State, which will not be unreasonably withheld.

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Exhibit I

INMATE/WARD TELECOMMUNICATIONS SYSTEM (IWTS)

MEMORANDUM OF AGREEMENT (MOA)

The undersigned agency agrees to participate in the State of California, Department of General Services Master Services Agreement (MSA) and agrees to all terms and conditions thereof. Agency participation begins when the agency signs this Memorandum of Agreement. This Memorandum of Agreement (MOA) should be sent to:

Contract Manager
Department of General Services
Telecommunications Division
601 Sequoia Pacific Blvd.
Sacramento, CA 95814-0282

For State Agencies, please reference Government Code Section 16301. The signing of this document merely states that an Agency wants to participate in the MSA for IWTS, DGS-3037. Actual ordering of equipment and/or services will be in accordance with the RFP requirements and agency communications with the contractor. It is mandatory that an Agency complete the MOA prior to ordering of equipment and/or services.

(Agency or Organization)	(Signature)
	(Printed Name)
(Date)	(Title)
1. Department/Organization	

2. Address of Organization	

3. Address of Requested Service	

4. IWTS Agent Main Contact Name	5. Telephone Number
_____	_____
6. Alternative IWTS Contact Name	7. Telephone Number
_____	_____
8. Address to Send Concessions to (Include City and Zip Code)	
